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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/806,554 | 03/23/2004 | Len C. Kretchman | SMEE2 12271-5-1 | 2558 |

7590 07/12/2005

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| EXAMINER |
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TRAN LIEN, THUY

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| ART UNIT | PAPER NUMBER |
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1761

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/806,554

Applicant(s)

KRETCHMAN ET AL

Examiner

Lien T. Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 25-44 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 25-44 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

The supplemental reply filed on 4/20/05 was not entered because supplemental replies are not entered as a matter of right except as provided in 37 CFR 1.111(a)(2)(ii).

Claims 25-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 2/18/05, applicant amends claim 25 to include the limitation "said sealing region formed of a surface-to-surface compression seal between said first and second slices of bread". This limitation is not supported by the original disclosure. There is no disclosure of surface-to-surface compression seal. The new limitation in claims 29-30 is not disclosed in the specification.

Claims 25-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over the book "Pasta, Pies and Pastries" in view of the article in "The Wichita Eagle".

In the book A Pasta, Pie, and Pastries, Ursula Kaiser teaches to use the Tartmaster and the Krimpkut sealer to cut, seal and crimp all at the same time. The basic bread method on page 7 teaches placing a filling on a first bread layer, covering the filling with a second bread layer, placing the Tartmaster over the mound of filling and pressing out tart. On page 11, it is disclosed to use bread including white, whole wheat or rye and the filling can vary including peanut butter, jam or jelly, cheese etc. Page 115 shows a round sandwich in which the edges are crimped. The book also shows that the Tartmaster has a cutting cylinder outside and a sleeve with notches for crimping

inside the cutting cylinder. The slices of bread are cut in unison and the crusts are removed as shown on page 43. The pictures on the page 10 and the front page show that the crimped edge is not right at the edge and space inwardly from it.

The cookbook does not teach the step of encapsulating a second food spread between a first and third layers of a first food spread as in claim 1, the first food spread being nut butter and the second food spread being jelly as in claims 27-28, using a platen as in 33-34 and contacting against the platen as in claims 35-40 and inserting the sandwich in an air tight package as in claims 41-42.

The article in the A Wichita Eagle teaches to prevent soggy bread when making peanut butter and jelly sandwich by spreading peanut butter on both pieces of bread and put the jelly in the middle.

The limitation of forming surface-to-surface compression seal does not define over the cookbook because the product in the cookbook obviously has the same seal. The product is cut and sealed the same way as claimed; thus, the product has the same seal. It would have been obvious to one skilled in the art to have different layers of filling materials to obtain different flavor and taste. It is notoriously well known that peanut butter and jelly go together and are often used together in sandwiches. When the fillers are peanut butter and jelly, it would have been obvious to encapsulate the jelly between the peanut butter layers to prevent the bread from becoming soggy as taught by the article in the A Wichita Eagle. As to packaging, it would have been obvious to package the product if long term storage is intended and if the product is to be put on the market. It would also have been obvious to one skilled in the art to use a plate or

Art Unit: 1761

some other form of surface to place the bread slices for sanitary reason and also to facilitate the cutting. It would have been obvious to use a surface or plate which has enough clearance for the bread slices such that the Tartmaster can easily cut through the slices. The selection of the type of plate or surface having specific features can be determined by one skilled in the art through routine experimentation to obtain the most optimum working surface to form the bread product. The Tartmaster has an outer cutting cylinder and inside notches; these are equivalent to the claims upper pressure plate and lower pressure surface in claims 35-36. The selection of a working surface is a matter of choice. Applicant has not shown any unexpected result or criticality with respect to the platen. The end product as obtained in the prior art process is the same the product obtained from the claimed process. The product made using the steps of the cookbook produces a product with crimped edge and spaced pressure points.

Claims 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cookbook "Pasta, Pies and Pastries" in view of the article in "The Wichita Eagle" as applied to claims 25-42 above, and further in view of Bunick et al.

The cookbook does not teach releasing pressurized gas to separate the bread slices from the cutting device.

Bunick et al teach to use air or steam injection to remove product from a mold once it is formed. (see col. 5 lines 19-30)

It would have been obvious for one skilled in the art to use air as taught by Bunick et al to aid in removing the bread slices from the cutting cylinder.

In the response filed 2/18/05, applicant argues the resulting structure of a sandwich formed by the Tartmaster can only be inferred. This argument is not persuasive because the cookbook clearly teaches how to make a sandwich and the pictures on the front clearly show the edge that is formed. Page 7 explicitly gives the steps of making a sandwich. Applicant argues Kaiser does not explain how the ravioli edge differs from the edge of a tart formed from bread. This difference is not an issue to be considered with respect to the claims. With respect to the Shideler reference, applicant argues the Shideler does not teach the structure of a seal of a sandwich. The Shideler reference is only relied upon for the teaching of putting jelly in between peanut butter layer so that it will not cause the bread to be soggy. The Tartmaster has the same structure as the cutting device claimed. It has an outside cutting cylinder and inside notches that formed the seal and the depressions. Thus, the same seal is formed on the sandwich. Applicant makes references to the declarations submitted. The declarations are not considered because they are directed to the instant application.

Applicant's arguments filed 2/18/05 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

Art Unit: 1761

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 10, 2005

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700